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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
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Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4, 4 *bis*, 7 and 8

Proposals and contributions received from Governments

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*A/AC.254/12.

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II. Proposals and contributions received from Governments

United Kingdom of Great Britain and Northern Ireland

[Original: English]

Article 4 *bis*: Money-laundering

1. The United Kingdom strongly supports the inclusion in the Convention of the provisions covering legislation and systems to counter money-laundering. Money-laundering is a serious transnational crime in its own right, with the potential to corrupt the global financial system. It also provides the life-blood of finance to support other serious crimes. Action against money-laundering is one of the key areas in which international standards and cooperation can help improve the fight against crime.

2. The United Kingdom believes that the United Nations Convention is an opportunity to support that process and to endorse and to extend the reach of international standards in the fight against money-laundering. But there is also a risk that, perversely, the United Nations Convention could undermine international action in this area by setting a new set of standards at a weaker level than the established international standards.

3. The United Kingdom notes that the 40 recommendations of the Financial Action Task Force already constitute a global international standard in measures to counter money-laundering. They have been endorsed by the General Assembly in its resolution S-20/4 D of 10 June 1998 on countering money-laundering. They have also been adopted by a number of regional bodies, forming a global network that establishes the 40 recommendations as a truly global standard. The United Kingdom's concern is that the United Nations Convention could undermine those standards if it sets different requirements.

4. The current draft of the Convention incorporates some of the Financial Action Task Force recommendations into articles 4 and 4 *bis*, but not others. The United Kingdom therefore proposes the amendment below.

Commentary on the draft text

5. Paragraph 1 (a) requires each State Party to ensure that it has a comprehensive regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies which are particularly susceptible to money-laundering and within its competence; this is consistent with recommendations 8 and 9 of the 40 recommendations of the Financial Action Task Force on Money Laundering. The text of the 40 recommendations is available in documents A/AC.254/CRP.11 (English and French) and A/AC.254/CRP.12 (Spanish).

6. The text highlights that the regime against money-laundering must require customer identification, record-keeping and the reporting of suspicious transactions. This list is, however, not exhaustive; the regime must be comprehensive and must therefore include other elements. Guidance on this and the definition of terms is provided by paragraph 2 of the article (see below).

7. Paragraph 1 (b) requires a State Party to ensure that the relevant authorities have the ability to cooperate and exchange information at both the national and international levels. Such cooperation and exchanges are also essential for preventing and investigating money-laundering.

8. For the purpose of implementing and applying the provisions of both article 4 (the criminalization of money-laundering) and paragraphs 1 and 2 of this article (a comprehensive domestic regulatory and supervisory system and the ability to cooperate at the national and international levels) all States Parties are required under paragraph 2 to adopt and adhere to the international standards set by the Financial Action Task Force. The prominence of those standards was recognized by the General Assembly in the 1998 Political Declaration and measures referred to above (para. 3).

9. Paragraph 3 provides that a State Party shall be in compliance with (present) article 23 of the draft Convention in respect of the obligations under article 4 and 4 *bis* if a State Party is subject to and participates in a regular process of peer review conducted by the Financial Action Task Force or other comparable regional body that assesses the implementation of anti-money-laundering regimes as set out in the article. The aim here is to ensure that there is no duplication of effort in respect of evaluations carried out under article 23 and those carried out by the Financial Action Task Force.

10. The United Kingdom considers that once the text of article 4 has been finalized by the Ad Hoc Committee, articles 4 and 4 *bis* might usefully be merged.

Article 4 bis

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to articles (14 and 19) of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels [within the conditions prescribed by its domestic legislation[1]].

2. For the purposes of implementing and applying the provisions of this article (4 and 4 *bis*), States Parties shall adopt and adhere to the international standards set by the Financial Action Task Force on Money Laundering established by the Heads of State or Government of the seven major industrialized countries and the President of the European Commission as set out for reference in annex ... to this Convention and as endorsed by the General Assembly in its resolution S-20/4 of 10 June 1998 on countering money-laundering.

[1] The United Kingdom has included these words to accommodate those delegations which might have a preference for references to domestic legislation in this subparagraph (as in articles 14 and 19) but the United Kingdom would not wish to see these included in the final article. This is an issue of general application that will need to be debated by the Ad Hoc Committee.

[2][3. With respect to the monitoring of implementation by States Parties of the obligations set forth in this article (4 and 4 *bis*), and without prejudice to the application of article (23) to other provisions of this Convention, a State Party shall be deemed to be in compliance with article (23) if that State Party is subject to and participates in a regular process of peer review conducted by the Financial Action Task Force or other comparable regional body that assesses implementation of anti-money-laundering regimes as set forth in this article.]

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[2] Depending upon the outcome of negotiations on article 23, this paragraph may require modification.